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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

FILE:

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APR 21 2011

IN RE: Petitioner:

DATE:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced

Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration

and Nationality Act, 8 U.S.C. § 1153(b)(2)

Office:

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form 1-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Chief, Administrative Appeals Office

DISCUSSION: The Director, Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment as an adjunct professor. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director did not contest that the petitioner qualifies for the classification sought but determined that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief, evidence that postdates the filing of the petition and evidence already part of the record of proceeding. For the reasons discussed below, the AAO upholds the director's ultimate determination that the petitioner has not established his eligibility for the benefit sought. While retention of knowledgeable professors in all fields is in the national interest, the petitioner has not established why the alien employment certification process described at 20 C.F.R. § 656.18 does not address that interest in this case. Specifically, the record does not demonstrate the petitioner's influence in his field such that the alien employment certification process normally required for advanced degree professionals, including professors, should be waived in the national interest.

Section 203(b) of the Act states in pertinent part that:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
 - (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
 - (B) Waiver of job offer.
 - (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in International Relations from University. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

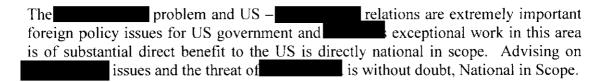
A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The term "prospective" requires future contributions by the alien and does not facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, international relations. The next consideration is whether the proposed benefits of the petitioner's employment would be national in scope. In response to the director's request for additional evidence, counsel stated:



The director acknowledged the evidence of the petitioner's articles, lectures and service as a commentator for news programs but concluded, without explanation, that the petitioner would not "directly or indirectly, impart a national-level benefit to the United States."

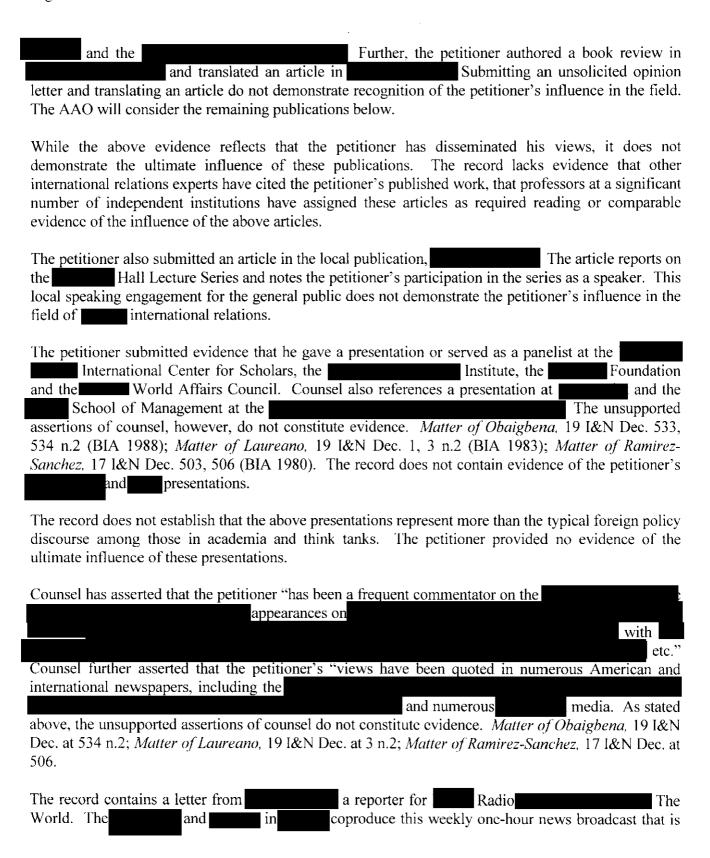
On appeal, counsel repeats the language from his response to the request for additional evidence. At issue is whether the proposed benefits of the petitioner's work will be national in scope. The record lacks evidence that the petitioner has ever served as an advisor to U.S. government officials. The fact that the petitioner's students may go on to work for the U.S. government is insufficient to establish the national scope of his work. Nevertheless, he has authored articles on U.S. policy in relation to in widely distributed publications. Thus, the AAO does not contest that the *proposed* benefits of his work would be national in scope.

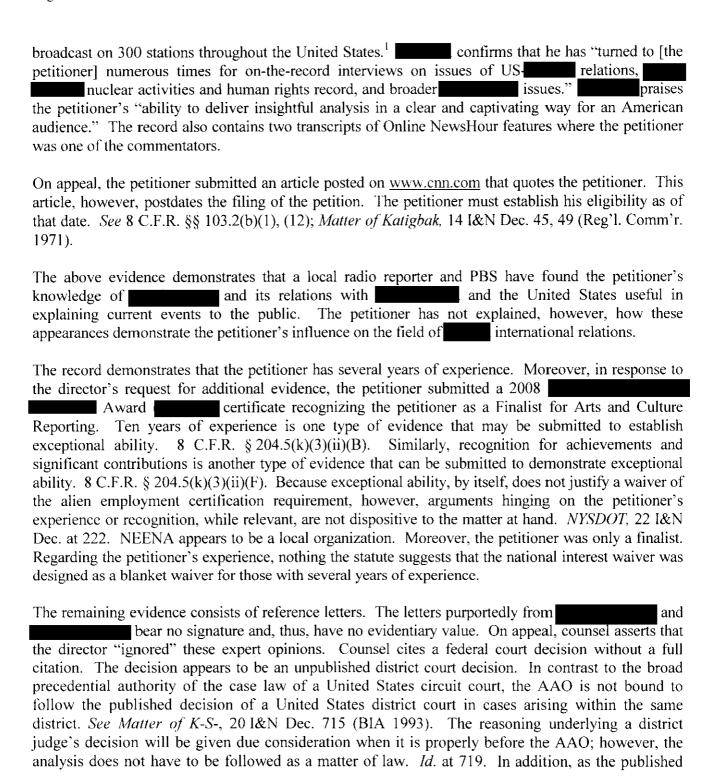
It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver is not persuasive. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

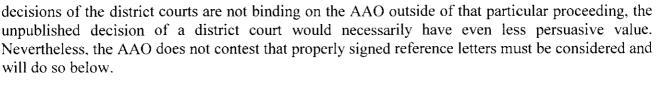
The petitioner has authored seve	eral articles. Some of t	these articles appea	ared in publica	itions (of the
institutions where he is working of	or has worked, such as	University's			
and University'	S	Other articles o	r chapters app	eared :	in the
general media such as	the	the	th	e	
International Center for					
	The petitioner has also	o authored opinion	pieces for the		

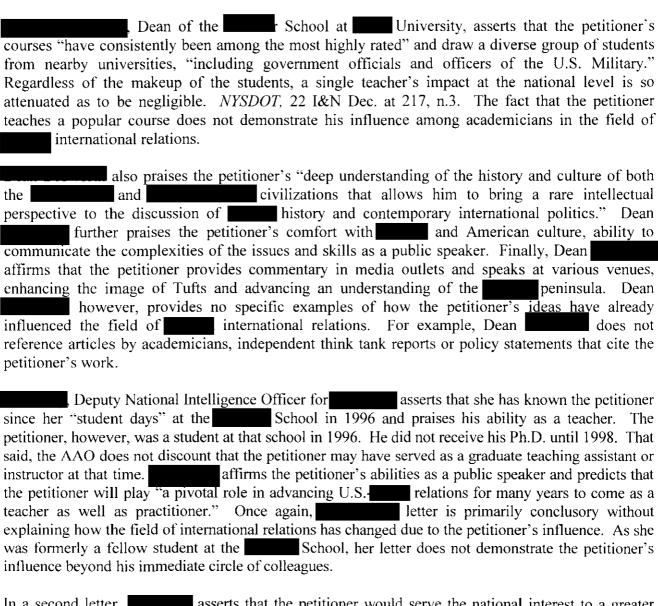




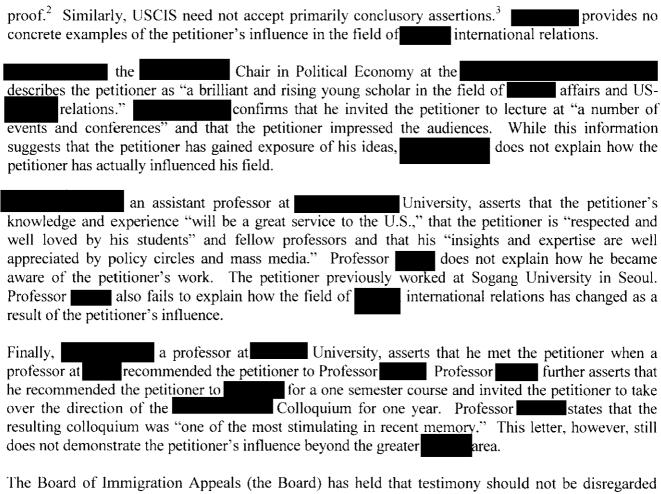


¹ See http://www.theworld.org/stations/#MD (accessed April 14, 2011 and incorporated into the record of proceedings).





In a second letter, asserts that the petitioner would serve the national interest to a greater degree than would an available U.S. worker with the same minimum qualifications because of the petitioner's "broad knowledge of both and American history that is profound and unique not only in depth and insight but in its applicability to analyzing realistically all important issues related to US relations." Merely repeating the legal standards does not satisfy the petitioner's burden of



The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." See, e.g., Matter of S-A-, 22 l&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. Matter of Y-B-, 21 l&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See Matter of Caron International, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. Id. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to

² Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), affd, 905 F. 2d 41 (2d. Cir. 1990); Avyr Associates, Inc. v. Meissner, 1997 WL 188942 at *5 (S.D.N.Y.).

³ 1756, Inc. v. The Attorney General of the United States, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

whether they support the alien's eligibility. See id. at 795; see also Matter of V-K-, 24 l&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. Id. at 795; see also Matter of Soffici, 22 l&N Dec. 158, 165 (Comm'r. 1998) (citing Matter of Treasure Craft of California, 14 l&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of knowledge and unique perspective without specifically identifying contributions to the field and providing specific examples of how those contributions have influenced the field. As stated above, merely repeating the legal standards does not satisfy the petitioner's burden of proof.⁴ The petitioner submitted no letters from anyone who had not worked with, studied with or interviewed the petitioner and failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Ultimately, the petitioner is an experienced professor in his field who has written articles, including some opinion pieces, and has provided commentary to the media. The petitioner has earned the respect of his colleagues and those who have interviewed him. Nevertheless, the record lacks evidence of his wider influence in the field such that a waiver of the alien employment certification process is warranted in the national interest. Nothing in the legislative history suggests that the national interest waiver was intended simply as a means for employers (or self-petitioning aliens) to avoid the inconvenience of the alien employment certification process. *NYSDOT*, 22 I&N Dec. at 223.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

⁴ Fedin Bros. Co., Ltd., 724 F. Supp. at 1108, aff'd, 905 F. 2d at 41; Avyr Associates, Inc., 1997 WL 188942 at *5. Similarly, USCIS need not accept primarily conclusory assertions. 1756, Inc., 745 F. Supp. at 15.